



W.P.Nos.29364 of 2005 and 6706 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 01.08.2022

PRONOUNCING ORDERS ON : 03.08.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.29364 of 2005 and 6706 of 2006
and WMP Nos.32191 of 2005 and 7243 & 7244 of 2006

The India Cements Ltd.,
Rep.nu its General Manager (Corp.Affairs)
"Dhun Building",827, Anna Salai
Chennai600 002.

..Petitioner
in Both WPs

.Vs.

- 1.The Government of Tamil Nadu
Rep.by its Secretary to Government
Industries Department
Fort. St.George, Chennai 600 009.
- 2.The Director of Geology and Mining
Industrial Estate
Guindy, Chennai 6.
- 3.The Collector
Tirunelveli District
Tirunelveli – 9.
- 4.The Inspector General of Registration
100, Sathome High Road
Chennai 600 028.
- 5.The District Registrar
Ariyalur, Perambalur District.

..Respondents
in W.P.No.29364 of 2005

..Respondents
in W.P.No.6706 of 2006



W.P.Nos.29364 of 2005 and 6706 of 2006

Prayer in W.P.Nos.29364 of 2005:

Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the District collector Tirunelveli made in his Proceedings M2/28230/05 dated 20.5.2005 and quash the same and consequently direct the respondent to calculate and collect the stamp duty for execution and registration of the lease deed in Form K of the Mineral Construction Rules 1960 of the lands of the petitioner over an extent of 28.43.0 hectares in Ramayanpatti Village, Tirunelveli Taluk and District for which mining operations are carried on based only on the dead rent fixed.

Prayer in W.P.No.6706 of 2006:

Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the District Collector Perambalur made in his proceedings in Na.Ka.No.219(G & M) 2005 dated 22.02.2006 and quash the same and consequently direct the respondents to calculate and collect the stamp duty for registration of the lease deed in Form K of the Mineral Construction Rules 1960 of the lands of the petitioner over an extent of 160.73.0 hectares in Alathiyur Village, Sendurai Taluk, Perambalur District, for which mining operations are to be carried on.

For Petitioners : Mr/s.Kaavya Silambanan
(in Both WPs)

For Respondents : Mr.B.Vijay
Additional Government Pleader



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COMMON ORDER

The issue involved in both the Writ Petitions are common and hence, they are taken up together and disposed of through this Common Order.

2. The case of the petitioner is that they are engaged in the business of manufacture and sale of cement. Limestone is the main raw material for the manufacture of cement. The petitioner therefore applied and has obtained various mining leases. It is the case of the petitioner that they have nearly 26 mining leases in various Districts. One such mining lease is for an extent of 70.25 acres of patta lands belonging to the petitioner. The lease was granted in favour of the petitioner for a period of 20 years through the Government Order issued in the year 1962 and this period ended in the year 1982. Thereafter, it was renewed from time to time upto the year 2017. When the third renewal was made for a period of 20 years from 1997 upto 2017, lease deed was executed in favour of the petitioner and the petitioner was directed to pay the stamp duty on the basis of the royalty payable. The petitioner made a representation and requested that the stamp duty shall be calculated only based on the annual dead rent and not on the annual royalty payable. Even though a clarification was sought for in this regard, there was no further development and the 3rd respondent was insisting for preparing the lease deed by typing on a stamp paper to the value of Rs.9,52,270/-. According to the petitioner, while arriving at this quantum, the respondents have fixed the rent based on the anticipated royalty. On this amount, the petitioner had to pay 1% towards the stamp duty. Aggrieved by the same, WP.No.29364 of



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2005 was filed challenging the proceedings of the District Collector dated 20.5.2005.

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3. Insofar as WP.No.6706 of 2006 is concerned, the mining lease pertains to an extent of nearly 437.07 Hectares which included both patta lands and poramboke lands at Perambalur District. In this case, the petitioner requested for granting mining lease for 30 years. The Government of Tamil Nadu, through a Government Order dated 17.10.2005, granted mining lease to the petitioner to an extent of 160.73.0 hectares. On 22.6.2006, the District Collector directed the petitioner to submit the lease agreement by typing on a stamp paper to the value of Rs. 84,46,988/-. Even in this case, the grievance of the petitioner is that the respondents have calculated the annual rent based on the anticipated royalty payable without fixing it on the basis of the dead rent. Aggrieved by the same, the present Writ Petition was filed.

4. A counter affidavit has been filed by the 2nd respondent in WP.No.29364 of 2005 and the relevant portions in the counter affidavit are extracted hereunder:

8. It is submitted that the petitioner company was directed by the third respondent vide letter Rc. No. M2/28230/ 2005, dt. 20.05.2005 to produce stamp paper to the value of Rs.9,52,270/- for execution of lease deed. The stamp duty was arrived based on the actual production of limestone and the royalty remitted by the petitioner company for the period from 1997-98 to 2004-2005 and the proposed production of limestone as provided in the mining plan approved by Indian Bureau of Mines vide Lr.No. TN/TNL/MP/Lst./928/Mds. dt.06.02.1997 and royalty payable by the



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petitioner for the period from 2005-06 to 2016-17 were taken into account.

The details are as follows:

1.	Actual production and transportation of Limestone for the period from 1997-98 to 2004-05 (8 years).	5,34,930 M.Ts.
2.	Proposed production of Limestone for the period from 2005-06 to 2016-17 (12 Years) as per the mining plan approved by Indian Bureau of Mines. (6 th year production of Limestone i.e., 1,31,750 MT was taken for arriving the proposed production of limestone for the remaining 12 years. 1,31,750 X 12 = 15,81,000).	15,81,000 M.Ts.
	Total (1+2)	21,15,930 M.Ts.
3.	Rate of royalty for Limestone	Rs.45/- per metric tonne
4.	Anticipated royalty for the period from 1997-98 to 2016-17 (20 years)	Rs.9,52,16,850/- (21,15,930 X 45)
5.	Security Deposit	Rs. 10,000/-
	Total (4+5)	Rs.9,52,26,850/-
6.	1% of the anticipated royalty and security deposit (9,52,26,850 X 1%)	Rs.9,52,268/- or Rs.9,52,270/-

15. It is further submitted that the General provisions in Para 9 of



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*Part IX of the lease deed in Form-K of Mineral Concession Rules, 1960 stipulates that, for the purpose of stamp duty, the anticipated royalty from the demised land has to be taken into account. **The petitioner themselves admitted in para 5 of the affidavit that they have earlier paid stamp duty for execution of lease deed based on the anticipated royalty and not on dead rent.** Therefore, the contention of the petitioner company that stamp duty to be arrived on dead rent is not in accordance with the provision of the Mines and Minerals (Development & Regulation) Act, 1957.*

17. With regard to averments made in Para 8, 9 and 10 of the affidavit it is submitted that the petitioner company was directed to produce stamp paper to the value of Rs.9,52,270/- by the third respondent vide letter Rc.No.M2/28230/ 2005, dated 20.05.2005. The stamp duty was arrived based on the actual production of limestone and the royalty remitted by the petitioner company for the period from 1997-98 to 2004-2005 and the proposed production of limestone as provided in the mining plan approved by Indian Bureau of Mines in Lr.No.TN/TNL/MP/Lst./928/Mds. dt.06.02.1997 and anticipated royalty to be remitted for the period from 2005-06 to 2016-17 were taken into account.

19. With regard to averments made in Grounds A and B of the affidavit it is submitted that the impugned order passed by the third respondent is legally tenable as the anticipated royalty and security deposit has been taken as the basis for computation of stamp duty in accordance with the provisions of Section 9(2) of the Mines and Minerals (Development & Regulation) Act, 1957 and Rule 32 of Mineral Concession Rules, 1960. The sub section (2) of Section 9 of the Mines and Minerals (Development & Regulation) Act, 1957 is reproduced hereunder:

"(2) The holder of a mining lease granted on or after the



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commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral".

21. With regard to averments made in Ground D, E, F, G, H and I of the affidavit it is submitted that, the subject area is in possession of the petitioner company for a period of more than six decades ie. from 18.10.1962 and mining operations were carried out by the petitioner and transport permits were issued to them upto 04.04.2014 for transport of Limestone mined from the subject area. As per Section 9(2) of the Act, the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him from the leased area, at the rate specified in the Second Schedule in respect of that mineral. The petitioner company has been issued with transport permits from the Office of the Deputy Director of Geology and Mining, Tirunelveli after collecting due royalty for the quantum of Limestone mined and transported from the subject area. Therefore the contention of the petitioner that, royalty is uncertain and could not be taken as a base for computing stamp duty and dead rent alone to be taken into account for fixing stamp duty is not correct.

22. With regard to averments made in Ground J, K and L of the affidavit it is submitted that the sub section (1) of Section 9A and proviso to sub-section (1) of Section 9A of the Act, 1957, are reproduced hereunder:

"(1) The holder of the mining lease, whether granted before or after the commencement of the Mines and Minerals (Development & Regulation) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease, or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rates as may be



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specified, for the time being, in the Third Schedule for all the areas, included in the instrument of lease.

Provided that where the holder of such mining lease becomes liable, under Section 9, to pay royalty for any mineral removed or consumed by him

*or by his agent, manager employee, contractor or sub lessee from the leased area, **he shall be liable to pay either such royalty, or dead rent in respect of that area, whichever is greater**".*

23. In this connection it is submitted that royalty to be remitted by the holder of mining lease towards the quantum of minerals removed or consumed from the lease hold area as stipulated under sub-section (2) of Section 9 of the Act is greater than the dead rent in respect of the area held under mining lease. Therefore, royalty payable by the petitioner from the lease hold area per annum as stipulated in Form K of Mineral Concession Rules, 1960 and 1% of the royalty and other amount as specified under Article 35 (a) of the Indian Stamp (Tamil Nadu Amendment), Act 2004 were taken for arriving stamp duty for execution of lease deed.

24. It is further submitted that the rates of royalty and dead rent are being revised by the Ministry of Mines not less than once in three years. Royalty is being collected for any mineral at the rate fixed under second schedule of the Mines and Minerals (Development & Regulation) Act, 1957. Whereas rates of dead rent for low value minerals including Limestone has been fixed on the areas held under mining lease in the third schedule of the Mines and Minerals (Development & Regulation) Act, 1957. Therefore, royalty and dead rent are two different components and as far as for computing stamp duty, the anticipated royalty only to be taken into account as per the provisions of the Act and as per the General provisions contained



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in Part – IX of the lease deed prescribed in Form-K of Minor Concession Rules, 1960.”

4. A separate counter affidavit has also been filed in W.P.No.6706 of 2006 by the 1st respondent and a similar stand has been taken by the respondents as in W.P.No.29364 of 2005.

5. Heard M/s.Kaavya Silambanan, learned counsel for the petitioner and Mr.B.Vijay, learned Additional Government Pleader appearing for the respondents.

6. Insofar as WP.No.29364 of 2005 is concerned, an order of interim stay was granted by this Court subject to the condition that the petitioner pays the stamp duty on the rate calculated taking into consideration the dead rent. Accordingly, the petitioner also requested the 3rd respondent to execute the lease deed based on the dead rent. No lease deed was executed in favour of the petitioner and the petitioner Company proceeded further to carry out the mining operations by remitting the royalty and it was also transported after obtaining transport permits. The lease period came to an end on 17.10.2017 and thereafter no mining operations were carried out by the petitioner in the subject area.

7. Insofar as WP.No.6706 of 2006 is concerned, this Court granted an interim order with a condition that the petitioner pays the stamp duty on the rate calculated at the dead rent. The petitioner accordingly paid the stamp duty on the basis of the directions issued by this Court and in this case, the lease period comes to an end only in the year 2030.



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8. The short issue that arises for consideration in both the Writ Petitions is as to whether while determining the lease amount to calculate the stamp duty payable, the respondents were right in adding the annual royalty payable or whether it should only be based on the dead rent, as contended by the Petitioner ?

9. According to the learned counsel for the petitioner, payment of royalty is based on the removal of the mineral and this amount keeps fluctuating depending upon the minerals mined. Whereas, dead rent is a fixed rent based on the area and only the dead rent should be taken into account for determining the lease amount value and payment of the stamp duty must be based on such value. To substantiate this submission, the learned counsel for the petitioner placed reliance upon the terms of the lease deed and Section 26 of the Indian Stamp Act, 1899 (hereinafter called as 'the Stamp Act'). The learned counsel also placed reliance upon Section 9 and Section 9-A of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act').

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents submitted that the petitioner was always paying the stamp duty based on the royalty and for the first time, raised the issue when the lease was renewed and came up with a contention that it must be based only on dead rent. The learned Additional Government Pleader further submitted that the rent has five components to it viz., the royalty, dead rent, surface right compensation, surface rent and security deposit. All these components are



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sufficiently explained and covered under the Act and Rules. That apart, as per the Mineral Concession Rules, the relevant form specifically provides for stamp duty on the anticipated royalty. Therefore, the learned Additional Government Pleader submitted that the claim has a statutory backing. That apart, the learned Additional Government Pleader also submitted that the amount is determinate under the various heads and to substantiate the same, the sanction to the mining lease under Form K was also brought to the notice of this Court.

11.The learned Additional Government Pleader also relied upon the Proviso to Section 26 of the Stamp Act and read it along with Section 2(16) of the Stamp Act and submitted that the stamp duty was properly levied under Article 35.

11.The fulcrum of the arguments of the learned counsel for the petitioner revolves around the judgment of the Andhra Pradesh High Court in ***The Associated Cement Cos. Ltd. v. Government of A.P. and another*** reported in ***1981 SCC On Line AP 78***. A very similar question arose before the Andhra Pradesh High Court and it was held as follows:

“17. The next Question is on what basis should the stamp-fee be calculated? It is stated by Mr. K. Srinivasa Murthy that in this case, the respondents calculated the stamp-fee payable under Art. 31(a)(iv) of Schedule I-A of the Act, which provides that in case of a lease for period exceeding 10 years but not exceeding 20 years, the stamp-duty payable is the same as or “conveyance” for a consideration equal to twice the amount or value of the average annual rent reserved. His complaint is that the authorities to the average royalty paid by the lessee for the previous years, i.e., during the period covered by the original lease, and adopted the same for this purpose. I am of the opinion that the complaint is justified. The basis of calculation



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must be the same, whether the lease-deed is executed for the first time, or whether it is executed by way of renewal. Now, because the present case is a case of renewal, the authorities are taking an average of the previous years as the basis for calculation. But, this basis cannot apply where the lease is being executed for the first time. There must be a uniform principle in all such cases. In the case of a fresh lease, no one can say — at the time of the execution of the lease-deed — whether the lessee would in fact remove and/or consume the mineral: and even if he does, in what quantity? In other words, the royalty payable by him in future is unascertainable. The only definite and ascertainable basis in such a case, however, is the annual dead-rent prescribed by Section 9-A, read with Third Schedule to the Act. That is the minimum amount which has to be paid by the lessee during the subsistence of the lease, irrespective of the fact whether he removes and/or consumes the mineral and pays any royalty thereon, or not.

18. For the above reasons, the writ petition is allowed in part. It is declared that while the lease-deed executed by the petitioner in Form-K in this case amounts to a 'lease' as defined in clause (16) of Section 2 of the Indian Stamp Act and is accordingly liable to stamp duty, the stamp-duty has to be calculated with reference to Art. 31(a)(iv) of Schedule I-A to the Act, taking the annual dead-rent as the average annual rent reserved under the lease-deed. In the circumstances of the case, there shall be no order as to costs. Advocate's Rs. 250/-"

12. Before dealing with the judgment relied upon by the learned counsel for the petitioner, it will be more appropriate to take note of the relevant provisions of the Stamp Act hereunder:

- **Section 2 (16)-**

(16) "Lease" means a lease of immovable property, and includes also—

(a) a patta;



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- (b) *a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immovable property;*
- (c) *any instrument by which tolls of any description are let;*
- (d) *any writing on an application for a lease intended to signify that the application is granted;*

• **Section 26-**

26. Stamp where value of subject-matter is indeterminate.—*Where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount of value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:*

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or only behalf of the Government, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under the lease, or

(b) when the lease has been granted by any other person, at twenty thousand rupees a year,

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp, actually used at the date of execution.



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• **Article 35 (a) and (b) -**

35. Lease, including an under-lease or sub-lease and any agreement to let or sub-let-

(a) where the period of lease is below thirty years.	One rupee for every Rs.100 or part thereof of the amount of rent, fine, premium or advance,
	if any, payable ;

(b) where the period of lease is thirty years and above and upto ninety-nine years.	Four rupees for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable;
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13. A careful reading of the definition of the term 'lease' as provided under the Stamp Act, shows that it has two parts. The first part is applicable to any lease with respect to an immovable property. The second part is applicable to various kinds of instruments by which the right is conferred upon the lessee for a specified period in respect of the immovable property. Since it is an inclusive definition, it has to be widely interpreted.

14. The important provision that is directly relevant for the purposes of this case is Section 26 of the Stamp Act. More particularly, the Proviso to this Section, since it directly deals with lease of a mine. This Proviso was inserted through Act 15 of 1904. Section 26 of the Stamp Act, applies when the value of the subject matter is indeterminate and in such cases, *ad valorem* duty is chargeable. According to the learned counsel for the petitioner, the



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royalty payable under a mining lease cannot be ascertained on the date of the execution of the lease deed. That apart, Section 9-A of the Act, only talks about the lessee being liable to pay either the royalty or the dead rent, whichever is higher and since the dead rent alone is the determinative factor as on the date of the execution of the lease deed, the same should be included in the rent and the stamp duty should be ascertained accordingly.

15.To deal with this contention made by the learned counsel for the petitioner, this Court has to see if the royalty payable by the lessee is an indeterminate factor. For that purpose, certain provisions under the Act must be taken note of and ultimately, the answer must be given on the effect of the Proviso to Section 26 of the Stamp Act.

16.Royalties in respect of mining leases is dealt with under Section 9 of the Act. For proper appreciation, Sub Sections 1 and 2 of Section 9 is extracted hereunder:

“9. Royalties in respect of mining leases.-(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any 1[mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any 1[mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.”



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17.Insofar as dead rent is concerned, it is dealt with under Section 9A of the Act. For proper appreciation, Sub Section 1 to Section 9A is extracted hereunder:

“1[9A. Dead rent to be paid by the lessee.-(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate, as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub- lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.”

18.For the sake of completion of facts, the right to collect surface right compensation is traceable to Section 24A of the Act read with Rule 72 of the Mineral Concession Rules and insofar as surface rent is concerned, the right is traceable under Rule 27 of the Mineral Concession Rules.

19.Insofar as the royalty is concerned, a mining plan is prepared by the lessee and it is submitted and the same is considered at the time of granting approval and based on the same, the amount is also fixed. For instance, in the sanction that was granted to the



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petitioner in WP.No.6706 of 2006, the rate of royalty was fixed based on the mining plan given by the petitioner as under:

a) Royalty – Limestone

1.L.D.grade

(less than 1.5 % silica content) –Rs.55/- (Rupees

fifty five only)

Per tonne

2) Others

- Rs.45/- (Rupees

forty five only) per

tonne

It is therefore clear that the royalty payable has been determined and the question of payment of dead rent will arise only where the operation is stalled or the operation did not take place in its full swing due to various factors and as a result of the same, the dead rent that is fixed in the sanction order is higher than the royalty payable. This is exactly what has been provided for under Section 9A of the Act.

20.It will also be relevant to take note of Form K under the Mineral Concession Rules which deals with the form of a lease and the terms and conditions to be incorporated in a lease. Part IX of Form K which stipulates the General Provisions, under Clause 9 specifically states as follows:

“9. For the purpose of stamp duty the anticipated royalty from the demised land is Rs..... per year.”

It is therefore clear that anticipated royalty is taken as the basis for the determination of the stamp duty. This means that there is a statutory backing for including royalty in the rent



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while determining the stamp duty payable. It will not be out of place to state that the petitioner was always paying the stamp duty based on the rent determined adding anticipated royalty and this is the first time, the petitioner has chosen to question this basis and is claiming that only the dead rent must be included in the rent.

21.To properly appreciate Form K which has been taken note of by this Court, the sanction that was given in WP.No.6706 of 2006, while determining the total lease amount is extracted hereunder:

FORM-K
RULE 31 OF MINERAL CONCESSION RULES, 1960
MINING LEASE DEED
GRANT OF MINING LEASE SANCTIONED IN
G.O. (3D) NO.103 – INDUSTRIES (MMA-2) DEPARTMENT
DATED : 17.10.2005

Anticipated Royalty for 30 years	20,69,33,400.00
Annual Compensation for Poramboke lands for 30 years	41,97,150.00
Security Deposit	10,000.00
Surface Rent for 30 years	34,110.00
Total (in Rs.)=	21,11,74,660.00

22. On a conspectus of the above discussion, this Court can safely come to the conclusion that payment of royalty under Section 9 of the Act as per the rate fixed in the sanction order is the rule and payment of dead rent under Section 9A is an exception. The payment of dead rent has been kept as a contingency to meet a situation where the operation is kept idle or the operation was not able to be carried out for the entire period



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due to various reasons. Under such circumstances, where the royalty payable works out to less than the dead rent itself, the dead rent becomes payable under Section 9A of the Act.

Hence, an exception or a contingency provided under the Act, can never form the basis for determining the rent for the purposes of payment of stamp duty. The learned counsel for the petitioner was harping upon this issue mainly on the ground that there is no certainty that a lessee will operate for the entire period or that the lessee may not face a situation where the operation becomes impossible and hence, it is only the dead rent which is compulsorily payable even under those circumstances which must be made the basis for determining the rent. This Court does not find any substance in this submission since the petitioner has been carrying on with the mining activity for quite a long time and has also submitted a mining plan for the purpose of getting the sanction and the royalty has been determined on that basis and therefore, an unexpected future contingency as contended by the learned counsel for the petitioner will not justify the petitioner claiming for the inclusion of the dead rent alone, while determining the rent.

23.The Division Bench of the Madhya Pradesh High Court had an occasion to deal with the similar issue in ***Steel Authority of India Ltd. Bhilai v. Collector of Stamps, Bilaspur*** reported in ***1985 SCC on line MP 153***. The issue that was taken up for consideration by the Madhya Pradesh High Court is extracted hereunder:

“3. All these cases relate to renewal of mining leases and the question is of the stamp duty payable on the instruments renewing the mining leases. For the purpose of computation of stamp duty on these instruments, the respondents have demanded duty on the amount of royalty paid during the last three years under the



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mining lease which is to be renewed in accordance with section 26 of the Stamp Act. The petitioners contend that section 26 has no application and by virtue of Article 35 alone stamp duty is payable only on the amount of annual dead rent fixed by the lease and the royalty required to be paid thereunder cannot be taken into account for the purpose of payment of stamp duty. The petitioners' contention is that the annual dead rent fixed under the lease deed indicates that "rent is fixed" by the lease and therefore clause (a) of Article 35 alone applies, whereas section 26 applies only to a case where the value of subject-matter is indeterminate. The question is whether this contention is correct."

24.The above issue was answered as follows:

"4....The actual controversy between the parties is really to the applicability of the proviso in section 26 relating to mining leases. Admittedly, royalty is payable under the mining lease and effect of the relevant statutory provisions read along with Part V of the instrument of lease in Form K is that the lessee is "liable to pay either such royalty or the dead rent in respect of that area, whichever is higher." This obviously is the consideration for the lease or, in other words, "rent" due thereunder from the lessee to the lessor. Dead rent is to be paid in respect of the area within the mining lease and royalty is paid on the quantity of mineral extracted and removed according to the prescribed rates. Where no excavation and removal of the mineral is done, dead rent alone is payable; but in case of excavation and removal of the mineral royalty is to be paid. It is clear that the higher of the two amounts is to be paid as consideration or in other words, "rent" under the lease. The meaning of "royalty" is well settled. "Royalty" in the present context means the payment made "to the owner of minerals for the right of working the same on every ton or other weight



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raised.” Royalty is a payment to the lessor proportionate to the amount of the mineral worked; it is paid in addition to dead rent and surface rent : and is a normal feature of mining leases. This is the meaning, of “royalty” stated in Surajdin Laxman v. State of M.P.(1960) M.P.L.J. 39) and B.B. Saha v. State Govt. of M.P., Bhopal (1969 M.P.L.J. 128) on the basis of references mentioned therein.

5. It would be useful to refer to the definition of “lease” in section 2(16) of the Stamp Act wherein an inclusive definition is given stating that it means a lease of immovable property. The expression “lease” used in the Stamp Act has, therefore, to be understood as defined in section 105 of the Transfer of Property Act in Chapter V relating to leases of immovable property. The definition of “lease” in section 105 of the Transfer of Property Act shows that it is a transfer of a right to enjoy such property in consideration of a price paid and that the consideration given by the lessee to the lessor under the lease, called by whatever name, is the “rent”. It is, therefore, obvious that the royalty payable under the mining lease by the lessee to the lessor is the “rent” or at least a part of the rent payable under the mining lease. The primary contention on behalf of the petitioners that royalty is not “rent” or a part thereof is clearly untenable. This view is fully supported by the decisions in Low & Co. v. Jyoti Prasad : (A.I.R. 1979 P.C. 299) and Tarkeshwar S/o Thakur Jiu v. B.D. Dey & Co. : ((1979) 3 SCC 106 : A.I.R. 1979 S.C. 1669).

6. Section 26 of the Stamp Act applies when the value of the subject-matter is indeterminate and ad valorem duty is chargeable on the instrument. The amount of royalty payable under a mining lease cannot, therefore, be ascertained at the date of its execution. Royalty is payable



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where it is higher than the dead rent according to the terms of the lease itself and as already indicated, royalty being consideration for the lease, it is rent or at least a part of the rent payable under the lease. These characteristics of an instrument of mining lease being beyond controversy and royalty being the "rent" or part of the rent in the case of a mining lease, section 26 of the Stamp Act including the proviso therein is clearly attracted and it cannot be said that the rent is fixed by such lease so as to apply Article 35(a) alone and exclude the applicability of section 26. The proviso in section 26 is enacted specifically for mining leases under which royalty is to be paid and if the petitioners' contention is accepted, it would not only be contrary to the settled meaning and concept of royalty payable under a mining lease but it would also render this part of section 26 as a legislative exercise in futility. Clause (a) of the Proviso also provides for calculating the amount or value of the subject-matter on the basis of estimated royalty likely to be payable under the lease. The mode of determining the value of subject-matter in such cases where the same cannot be ascertained with precision at the date of the execution of the instrument has also been provided in section 26. It cannot, therefore, be doubted that section 26 of the Stamp Act clearly applies."

25.This Court is in complete agreement with the findings of the Division Bench of the Madhya Pradesh High Court.

26.It is also important to take note of the subsequent judgment of the Andhra Pradesh in *Shri Bhogeshwara Cement & Mineral Industries Limited v. Govt. of A.P.* reported in 1987



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SCC OnLine AP 369. The judgment that was relied upon by the learned counsel for the petitioner was dealt with in this case and it was held as follows:

“6. Thus, it is clear that where the value of the subject-matter is indeterminate and such a subject-matter is in respect of a lease granted by or on behalf of the Government, then such amount or the valuation would be taken by the Collector having regard to all the circumstances of the case and the Collector has to estimate the amount which is likely to be payable (obviously in future) by way of royalty or a share to the Government and the whole of such royalty or share which shall be claimable under such lease shall be the valuation for the purpose of stamp duty.

7. It is undoubtedly true that my learned brother Jeevan Reddy J, in a well-considered judgment has referred to the effect of the lease under the Act and the stamp duty payable thereon and held that what was estimated in the lease deed would be the stamp duty. But unfortunately, proviso (a) to Sec. 26 has not been brought to the notice of my learned brother. As a result, he did not have the occasion to consider the effect thereof. When the statute has prescribed the estimate and gives the power to the Collector to make the estimate of the likely royalty payable during the period of lease and having been correctly estimated by the Collector then the question would be whether this could give a go-bye to it, and merely fall back upon the main part of Sec. 26 of the Act, and Sec. 9A of the Act as estimated by the lessee? In my respectful view, we have to give effect to the legislative animation. The Legislative animation is adumbrated and is discernable in proviso (a) to Sec. 26 of the Stamp Act. It is not the case the petitioner that what was estimated by the Collector is not correct method and the stamp duty payable therein is incorrect. Thus considered 1 hold that by operation



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of proviso (a) to Sec. 26 of the Stamp Act what was estimated by the Collector is perfectly correct. It may be true that the petitioner may not likely to gain the entire advantage of the estimated quantum or he may get much more than what was estimated. But the question is whether the estimate is legally correct or not. The estimate made by the Collector is based on the material relating to the lease granted to the petitioner and the quantum likely to fetch to the petitioner. Sri Gururaj, the learned counsel, has relied upon illustration (a) to Sec. 26 of the Stamp Act given by the learned author Sanjiv Row in his 'Stamp Act', 1979 edition, at pages 199-200, which is thus:

“(a) There was a lease deed for 10 years, which was unstamped but registered, and it recited that the lessee should plant 50,000 casuarina trees worth Rs. 1000/- on the land. It was further provided that, at the end of the period, the trees were to be felled and the parties were to share equally in the expenses of felling the trees and the sale proceeds. The question arose whether this section applied to the case. Abdur Rahim, J, observed that the cases, intended to be covered by Sec. 26, were like those of the produce of mines, expressly mentioned in the Sec., where what would be realised was altogether uncertain not merely the market value but also the quantity of the article, bargained for. But Srinivasa Iyyengar, J., observed that where no duty was payable, assuming the parties were right that the lease was exempted from duty under Article 35, there was no question of any ad valorem duty payable on the instrument.”

8. In my view, that illustration is not of material help to the petitioner for the reason that those are the cases where leases relate to private individuals. But with regard to the leases granted by the Government, the proviso squarely covers the field. Accordingly, the above illustration is of



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little assistance to the petitioner."

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27.The above judgment has virtually held that the judgment of the other learned Single Judge in *The Associated Cement Companies Ltd.*, referred supra is *per incuriam*. This is in view of the fact that the earlier judgment was rendered without considering the effect of the Proviso to Section 26 of the Stamp Act. The above judgement is the complete answer for the effect of the Proviso to Section 26 of the Stamp Act and I respectfully concur with the same. While reaching the above conclusion, the learned Single Judge of the Andhra Pradesh High Court has rightly held that the estimate made by the Collector while fixing the royalty is based on the material relating to the lease granted to the petitioner and the quantum that is likely to be fetched to the petitioner. This is entirely based on the mining plan that is submitted by the petitioner and such determination does not take place on the basis of any assumptions and surmises.

28. In view of the above discussion, this Court does not find any illegality in the stamp duty that was fixed based on the total lease amount calculated under Form K. The amount that was determined is perfectly in line with the Proviso to Section 26 of the Stamp Act.

29.Article 35 provides for the payment of stamp duty and Article 35(a) will apply to the Stamp Duty payable in WP.No.29364 of 2005 and Article 35(b) will apply to the stamp duty payable in WP.No.6706 of 2006. The amount that was determined by the District Collector in both the Writ Petitions is perfectly in order and there is no ground to interfere with the same.



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This Court holds that it is only the royalty that must be included in the rent amount and not the dead rent, as contended by the petitioner.

30.In the result, both the Writ Petitions are dismissed and it is open to the respondents to insist for the payment of the stamp duty as determined in the impugned communications that were put to challenge in these Writ Petitions and the petitioner is bound to pay the same. The lease deed shall be registered on payment of such stamp duty by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

03.08.2022

KP
Internet: Yes
Index: Yes
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To

- 1.The Government of Tamil Nadu
Rep.by its Secretary to Government
Industries Department
Fort. St.George, Chennai 600 009.
- 2.The Director of Geology and Mining
Industrial Estate
Guindy, Chennai 6.
- 3.The Collector
Tirunelveli District
Tirunelveli – 9.
- 4.The Inspector General of Registration
100, Sathome High Road
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N.ANAND VENKATESH. J.,

KP

**Pre-Delivery Common Order in
W.P.Nos.29364 of 2005 and 6706 of 2006**



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